



# Fact Sheet

## Frequently Asked Questions About Water Unavailability in the Sacramento-San Joaquin Delta (Delta) Watershed

**Why did I receive a letter dated June 15, 2021 from the State Water Resources Control Board titled “Notice of Water Unavailability for Post-1914 Water Right Holders and Warning of Impending Water Unavailability for Pre-1914 and Riparian Claimants in the Sacramento-San Joaquin Delta Watershed?”**

Due to critically dry hydrologic conditions in the Delta watershed this year, there is not enough water available to serve many water right holders. Therefore, the State Water Resources Control Board (State Water Board or Board) is issuing notices of water unavailability based on California’s water rights priority system of “first in time, first in right.” Generally, this means that when water is limited, the most recently permitted (“junior”) water right holders are required to stop diverting before restrictions are imposed on more senior water right holders. These more senior water right holders include appropriative water right holders with more senior water right priority dates and riparian water right holders that generally have the most senior right to natural flows.

The Board’s action follows the [Governor’s May 10, 2021 Proclamation of a State of Emergency](#) that expanded a previous drought proclamation to include the entire Delta watershed and directs the State Water Board and other agencies to consider a number of actions to implement the priority system and to protect water needed for health, safety, and protection of water quality in the Delta watershed.

Diverting water when it is unavailable at the priority of specific water rights violates California water law, injures more senior water rights, and damages the Delta ecosystem. The letter sent by the State Water Board on June 15 is a notice of water unavailability for post-1914 water right holders and a warning for pre-1914 claimants that they may soon receive a similar notification of water unavailability. Given the extreme drought conditions, the letter also warns riparian water right claimants that they may also receive notice that natural flow in parts of the watershed is insufficient to meet their needs, requiring shared reductions in their diversions, possibly to zero.

### **What is a notice of water unavailability?**

Notices of water unavailability inform diverters that, based on data and analysis by State Water Board staff, there appears to be insufficient water available to divert under specified water rights. Notices of water unavailability are not orders to stop diverting. Rather, notices of water unavailability inform water right holders that water is estimated



to be unavailable for their priority of right or will be unavailable soon. Water right holders and claimants should use the information made available by the Board to inform their water diversion and use decisions within the context of California's water rights system.

Diversions that occur when there is insufficient water to meet the conditions (including priority) of a right are unlawful. Unlawful diversions are subject to enforcement actions initiated at the informed discretion of the Board or upon receipt and investigation of a complaint. Subject to notice and the opportunity for an evidentiary hearing, those found to have diverted unlawfully face fines of up to \$1,000 per day and \$2,500 per acre-foot. So, while notices of water unavailability do not constitute a direct order to stop diversions, they do provide warning that diversion in excess of what is allowed by their water right could result in enforcement actions, fines, and penalties.

### **For which diverters does the June 15, 2021 letter serve as a notice of water unavailability?**

The best available data indicates that water is unavailable for all post-1914 appropriative water rights in the Delta watershed. On June 15, the State Water Board sent letters to all known diverters in the Delta watershed to warn them of drought conditions. For post-1914 appropriative water right holders, including holders of registrations and stockpond certificates, these letters serve as notices of water unavailability. In total, the Board sent notices of water unavailability, via postal mail, to approximately 4,300 water right holders for approximately 9,150 post-1914 appropriative rights (some water users hold or claim more than one right).

### **How long will the notices remain in effect?**

Water is likely to remain unavailable to many users until winter precipitation restores flows. Given that it is still early in the dry season, hydrologic conditions may worsen, and notices of water unavailability may be issued to additional right holders and claimants.

The State Water Board plans to provide updated information on water unavailability for the Delta watershed, including issuance of any future notices of water unavailability, through the [Water Rights "Delta Drought" email list](#). Please subscribe to this list to stay informed and receive information regarding future water unavailability in the Delta watershed. Updates will also be posted on the [Delta Drought Information webpage](#). The State Water Board does not plan to send future water unavailability notices by postal mail. The letter sent on June 15 advises all known water right claimants in the Delta watershed of their responsibilities under California water law, including their responsibility to access updated information affecting their right to divert water either by subscribing to the Delta Drought email list to receive future updates or by regularly checking the [Delta Drought Information webpage](#).

**Why is water unavailable if I can see it flowing in a river or stream?**

Although recipients of a notice of water unavailability may observe water flowing past their point of diversion, that water is expected to be needed to meet a more senior water right, is being released from storage to meet contractual water supplies and is not available to users without a contract, or is being released to repel salt water from the ocean or to meet other requirements. Releases of water from reservoirs are critical for managing water quality in the Delta—specifically, to prevent salty Bay water from intruding into the interior of the Delta where it could harm sensitive ecosystems, agricultural lands, and the health, safety, and well-being of the two-thirds of Californians who typically receive a portion of their water from the Delta.

**Can I use water stored in a reservoir?**

Water stored in reservoirs in the Delta's upper watersheds is released to help meet downstream water quality standards and to supply those who have contracted for the water. During dry periods such as 2021, these storage releases can account for almost all the water in the rivers below the reservoirs. The released water also protects multiple species under the State and federal Endangered Species Acts. If you have a right that allows for water storage, or have a contract to access stored water, you may be able to continue to divert and use previously stored water, depending on the specifics of that right or contract.

Diverting water when it is unavailable for a given priority of water right violates California water law, can injure other water right holders, and harms fish and wildlife. In accordance with California law, regulations, and the Governor's proclamation, the State Water Board will pursue all actions necessary to protect water right holders, public health and safety, and the environment.

**What is the purpose of the response request included in the June 15, 2021 letter?**

The June 15 letter also alerts right holders affected by the notices of water unavailability that they should submit information on their water supply via a web certification form provided by the State Water Board. Through the certification form, right holders inform the Board whether they plan to cease diversions, if they have alternative sources of water, or if they have a critical need to divert water unavailable at their priority of right for human health and safety, fire suppression (as required by the California Department of Forestry and Fire Protection or another authority), critical air quality control (as required by California Air Resources Board or another authority), or a non-consumptive use, such as hydroelectric power generation.

Post-1914 appropriative water right holders should respond through the online [Water Unavailability Certification Form](#) within seven days of receiving a notice of water

unavailability to help the Board better manage limited water supplies. State Water Board staff may reach out to respondents if additional information is needed.

**How can right holders submit a Water Unavailability Certification Form?**

Post-1914 appropriative water right holders should respond via the State Water Board's [Water Right Form and Survey Submittal Portal](#). To log in, right holders should use the Water Right ID login and password provided in the upper right of the first page of the June 15 letter. Right holders should submit a separate form for each of their post-1914 appropriative water rights, using the Water Right ID login and password provided in each letter they receive.

**Will water be available for riparian and pre-1914 appropriative rights this summer?**

The State Water Board is currently in the process of evaluating whether water will be available for pre-1914 appropriative and riparian claims. Current data indicate that water may be unavailable to meet the diversion demands of some pre-1914 appropriative and riparian claimants as early as mid-summer.

The Board will post updates and communications on watershed conditions and water unavailability on the [Delta Drought Information webpage](#). In the event that the State Water Board determines, based on its analysis of updated and refined supply and demand data, that water is unavailable for pre-1914 appropriative claims and/or riparian claims, the Board will both post the information on its website and provide email notifications via the Water Rights "Delta Drought" email list. You may subscribe to the "Delta Drought" email list at

[https://www.waterboards.ca.gov/resources/email\\_subscriptions/swrcb\\_subscribe.html](https://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html)

**How does a notice of water unavailability differ from a curtailment order?**

Curtailment orders are directives to stop diverting. For instance, Standard Water Right Term 91 requires specific water right license holders to curtail their diversions upon notice by the State Water Board that triggering water supply conditions are in effect.<sup>1</sup> Diversions under licenses containing Term 91 have been curtailed since April 29, 2021 and until further notice. Curtailment orders may also be issued pursuant to investigation of complaints, identification of unlawful diversions, and Board-adopted regulations.

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<sup>1</sup> Additional information about Term 91 is available on the State Water Board's [Term 91 Curtailment Information webpage](#).

**Will the State Water Board adopt emergency curtailment regulations or issue curtailment orders?**

The [Governor's May 10, 2021 Proclamation of a State of Emergency](#) directs the State Water Board to “consider emergency regulations to curtail water diversions when water is not available at water right holders’ priority of right or to protect releases of stored water.” The Board is further directed to “consider emergency regulations to establish minimum drought instream flows.” Emergency regulations may curtail specified priorities and classes of water rights, potentially including pre-1914 appropriative and/or riparian rights. An emergency curtailment regulation may provide exemptions for critical municipal and domestic health and safety needs.

The Board has not yet initiated the emergency rulemaking process. When the process is initiated, the State Water Board will provide notice through the [“Delta Drought” and “Delta Water Rights” email subscription lists](#), as well as potentially other existing Board subscription lists. The notice of the emergency rulemaking will include information about how the public can participate in the Board’s review, consideration, and adoption process. If you are interested in following the emergency regulatory process, please subscribe to those lists through the State Water Board website.

**How can affected right holders access needed water supplies?**

California’s water rights priority system requires right holders to completely cease diversions when water is unavailable to serve their priority of right. Water users who are notified that water is unavailable at their priority of right have several options for continuing to access needed water supplies, including use of water they have previously stored under a valid storage right, water transfers, water purchases from others, and production of groundwater, all of which were widely used approaches to manage through the 2012–2016 drought. All water users, regardless of their priority, should also implement available conservation plans and strategies. Right holders that need to provide water to meet minimum health and safety needs but do not have alternative supplies should inform the State Water Board immediately via the [Water Unavailability Certification Form](#), so that they may work with Board staff to explore options to ensure minimum health and safety needs are met. Stored water released by to meet water quality standards and to supply senior right holders or contractors is not available for other diverters.

**Can I pursue an alternative compliance plan or voluntary agreement to gain access to needed water supplies?**

Diverters are encouraged to pursue alternative compliance plans or voluntary agreements to respond proactively to the shortage conditions in the Delta watershed. An alternative compliance plan or voluntary agreement must be approved by the State Water Board prior to implementation if the plan seeks to avoid curtailment.



If you have developed a proposed alternative compliance plan or voluntary agreement, contact State Water Board staff at [Bay-Delta@waterboards.ca.gov](mailto:Bay-Delta@waterboards.ca.gov). Please note that proposed plans and voluntary agreements that rely on senior water rights may be impacted by future water unavailability and may not provide for reliable, authorized continuation of diversions.

## **How was water unavailability determined for the Delta watershed?**

The State Water Board developed a Water Unavailability Methodology for the Delta Watershed (Water Unavailability Methodology) to identify when available data indicates that natural and abandoned water supplies are unavailable for diversion for consumptive use by diverters at different priorities of right within the Delta watershed during the 2021 irrigation season. The Water Unavailability Methodology is not intended to account for demands for previously stored water, imported supplies, or contractual demands. The Water Unavailability Methodology evaluates water supplies and demands monthly at both the local subwatershed scale and the larger Sacramento River watershed and San Joaquin River watershed scales.

A report describing the Water Unavailability Methodology is available on the Board's [Drought Tools and Methods webpage](#), along with visualizations of the supply-demand comparison and other supporting materials (data spreadsheet, technical appendices, and frequently asked questions). This methodology was the subject of a Board staff-led workshop on May 21, 2021 and a public information item at the State Water Board Meeting on June 1, 2021. Recordings of those public presentations are accessible on the [Delta Drought Information webpage](#). Refinements to the Water Unavailability Methodology have been made since the initial draft was released in response to updated information as well as comments and suggestions from those who have reviewed or applied the tool. Further updates, particularly for the purpose of provided requested clarifications, are being considered. Any significant updates to the Water Unavailability Methodology documentation will be posted on the [Delta Drought Information webpage](#).

## **How are water quality standards and public trust resources being protected?**

The Water Unavailability Methodology does not allocate natural or abandoned streamflow to meet water quality standards or to protect public trust resources. The Water Unavailability Methodology allocates all natural and abandoned streamflow to water rights and claims, according to their priorities; it assumes water needed to meet water quality standards and to protect public trust resources, such as endangered fish, will be provided by stored water released from reservoirs. That is one critical reason the Governor's drought proclamation directs the State Water Board to consider emergency regulations to protect releases of stored water.

## How can I report an unauthorized diversion?

You can report an apparently illegal or unauthorized diversion through the [CalEPA Environmental Complaint website](#). Please submit as much supporting information (specific location, apparent use and user, pictures, etc.) as possible. Additional information on the complaints and enforcement process is available on the [Complaints Program webpage](#).

## How can I contact the State Water Board?

Questions regarding the [Water Unavailability Certification Form](#) or information from these Frequently Asked Questions can be submitted via email to [Bay-Delta@waterboards.ca.gov](mailto:Bay-Delta@waterboards.ca.gov). You may also contact State Water Board staff at the Delta Drought phone line at (916) 319-0960 and a staff member will respond as soon as possible.

## Where can I find more information?

Additional information related to the drought and notices of water unavailability is available on the Board's website. Useful links are provided below:

- [Drought Information & Updates](#)
- [Water Board's Role in Drought](#)
- [Drought Tools and Methods](#)
- [Water Unavailability Methodology for the Delta Watershed](#) (including Visualization Tool)
  - [Summary Report](#)
  - [Technical Appendix A, Methodology Spreadsheet Description](#)
  - [Technical Appendix B, Demand Data Development Process](#)
  - [Water Unavailability Methodology Spreadsheet](#)

*These frequently asked questions were last updated June 16, 2021.*